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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 554 of 2005**

**Pintu @ Rajesh**

**Versus**

**State of Chhattisgarh**

**JUDGMENT**

**Post for: 23.07.2007**

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**Sd/-  
Sunil Kumar Sinha  
Judge**

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*Noted  
-d/bk  
GA  
23/7*

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 554 of 2005**

**APPELLANT**

Pintu @ Rajesh, S/o. Umendra Prasad @  
Chhakku, Caste- Kewat, Aged about 22 years,  
Occupation - Wagery, R/o. Village Ranai, P.S.  
Patna, Tahsil Baikunthpur, Distt. Koriya (C.G.)

**Versus**

**RESPONDENT**

State of Chhattisgarh, Through P.S. Patna,  
Distt. Koriya (C.G.)

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**Appearance:**

Shri Ashok Kumar Shukla, counsel for the appellant.  
Shri N.K. Mehta, Panel Lawyer, for the State.

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**JUDGMENT**  
**(23.07.2007)**

**SUNIL KUMAR SINHA, J.**

(1) Being aggrieved with the judgment of conviction and order of sentence date 24.6.2005 passed by the Additional Sessions Judge, Baikunthpur, District Koriya in Sessions Trial No. 376/2004, whereby, the appellant was convicted under Section 307 of I.P.C. and sentenced to undergo R.I. for 4 years and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 6 months, the appellant has preferred this criminal appeal.

(2) The allegations are that the appellant has attempted the life of complainant- Muneshwari Bai (P.W.-10) on 21.5.2004 at about 5.00 a.m., when she had gone to answer the call of nature. Muneshwari Bai was a neighbour of the appellant. The appellant was keeping this view that she is a *tonahi* and for this, he inflicted two injuries on her by a sword. Muneshwari Bai lodged the report on the same day at about 9.00 a.m. vide Ex.-P/12, which contains the name of the appellant as the assailant. Her medical examination report Ex.-P/7 proved by Dr. A.K. Sharma (P.W.-4) would show that she received the following injuries:

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- 1) An incised wound (deep) on the back of scalp running upto left ear pinna, in size of 10 inch x 1½ inch x 1 inch, margin regular, clotted blood present.
- 2) An incised wound on the back portion of the head at occipital region adjoining to injury No.1, just above it, in size 6 inch x 1 inch x 1 inch, margin regular, clotted blood present.
- (3) The conviction of the appellant is based upon the testimony of the complainant- Muneshwari Bai (P.W.-10) corroborated by prompt F.I.R. and medical report.
- (4) Learned counsel for the appellant argued that the identity of the appellant has not been established. Secondly, he argued that in the facts and circumstances of the case, an offence under Section 307 I.P.C. would not be made out and at the most, the offence would fall under Section 324 I.P.C.
- (5) On the other hand, learned counsel for the State supported the judgment of conviction and order of sentence passed by the Sessions Court.
- (6) I have heard the learned counsel for the parties at length and have also perused the records of the Sessions case.
- (7) So far as first argument regarding identity is concerned, that cannot be accepted in view of the evidence of victim Muneshwari Bai (P.W.-10). She has deposed that on the fateful day, when she was returning to her house after answering the call of nature, the appellant met her near his house, she asked him as to who is he ? she asked for 3-4 times but inspite of giving reply, the appellant assaulted her with sword, which he was keeping with him. In the cross-examination, a suggestion was giving to her that she could not see as to who assaulted her but she denied the suggestion making reference to the appellant. Learned counsel for the appellant argued that since she herself was asking as to who is

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there, therefore, it appears that she could not identify the appellant. This argument cannot be entertained because it is a natural conduct that a person may not identify another person from some distance and therefore, it is usually asked like this but when he comes closure to him then he knows who is he and at that point of time, his earlier conduct of asking the name becomes irrelevant. In the present case, the time of incident was 5.00 a.m. and the month was that of May, therefore, in normal course such a conduct was possible which does not destroy the testimony of the victim regarding identity of the appellant. Moreover, as stated above, they were neighbours and they were known to each other and the appellant was also named in the prompt F.I.R. There is no force in this argument and the same cannot be accepted.

(8) So far as second argument is concerned, learned counsel for the appellant relied on a decision of the M.P. High Court rendered in the matter of Ram Krishna Vs. State of M.P., 2000 (I) Cr.C.P. (M.P.) 240. In the said case, the accused was charged with an offence under Section 307 I.P.C. for allegedly attempting life of the victim with the help of sword as in this case. The victim had received 6 injuries out of which injuries No. 5 & 6 were as follows:

" 5. Incised wound over left side neck below and back side of left ear, size 1"  $\frac{1}{2}$ " X muscle deep caused by sharp cutting object duration 6 hours. Fresh bleeding present.

6. Incised wound over left Parito occipital region vertically placed size 4" X  $\frac{1}{2}$ " X bone deep caused by sharp cutting object duration within six hours. Fresh bleeding present."

In the said situation, while hearing the appeal, the High Court convicted the appellant under Section 324 I.P.C. keeping in view the nature and size of the injuries and the absence of motive etc.

(9) It is an old principle laid down by the Apex Court in the matter of Sarju Prasad -Vs- State of Bihar, AIR 1965 S.C. 843 that in order to bring the offence home to accused, the prosecution must establish that

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his intention was one of the three kinds mentioned in section 300 I.P.C. The state of mind of the accused has to be deduced from surrounding circumstances and motive would be a relevant circumstance and where the evidence is not sufficient to establish with certainty, existence of requisite intention or knowledge of accused, the accused can be convicted only u/s 324 and not u/s 307 IPC.

(10) Further in the matter of Hari Kishan & State of Haryana -Vs- Sukhbir Singh and others, AIR 1988 S.C. 2127, the Apex Court held that u/s 307 IPC, what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". U/s 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

(11) If we apply the principles of above cases, in the facts and circumstances of this case, it does not appear that the appellant was having an intention to cause the death of the victim, because the motive to attempt the life of the victim has not been established. It only comes in the evidence of the victim that the appellant used to say her *tonahi*, due to which, he has assaulted her but it no where comes that on that petty pretext he had a motive to cause her death. No instances have been brought on record that the assumption of the appellant, that the victim was a *tonahi*, was so strong that he would like to kill her. Apart from the above, it comes in Para-13 of the judgment that the injuries sustained by the victim were simple in nature. These are the factors on which, it can be

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said that the intention of the appellant was not to cause the death of the victim- Muneshwari Bai (P.W.-10). Therefore, the conviction is required to be altered from Section 307 to Section 324 IPC.

(12) In the result, the appeal is partly allowed. The conviction and jail sentence awarded to the appellant under Section 307 IPC are set aside. Instead thereof he is convicted under Section 324 IPC and sentenced to undergo R.I. for 3 years. The fine sentence imposed against the appellant along with the default sentence are maintained. The direction regarding payment to the victim in case the fine is realized is also maintained. The appellant shall be entitled to set-off and other usual benefits.

Sd/-  
Sunil Kumar Sinha  
Judge

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